

REMARKS

In response to the Final Office Action mailed December 27, 2007 (hereinafter "Final Action"), claims 1, 3-4, 7-9, 31-32, 35-36, 38, 44, 66-67, 70-71, 85, 89, 92, 102, 116, 123, 133, 137 and 153 have been amended. No claims have been cancelled or newly added. Support for the instant amendments is provided throughout the as-filed Specification. Thus, no new matter has been added. Therefore, claims 1-153 are pending, of which claims 11-13, 17-22, 48, 52-57, 82-83, 99, 101, 113-114, 130 and 132 remain withdrawn. In view of the following comments, allowance of all the claims pending in the application is respectfully requested.

Entry of this Amendment is proper under 37 C.F.R. §1.116, as the claim changes: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not require any further consideration as the claim changes employ limitations from originally-filed dependent claims that should have already been searched; and (c) places the application in better form for an Appeal, should an Appeal be necessary.

Examiners' Interview

As a preliminary matter, Applicants would like to express appreciation for the courtesies extended by Examiners Sheikh and Zeender to Applicants' representative during the interview conducted on February 20, 2008 (hereinafter the "Interview"). The substance of the Interview is incorporated into the remarks below and constitutes Applicants' record of the interview.

Election/Restriction

Applicants wish to thank the Examiner for withdrawing the Restriction Requirement with respect to claims 1-10, 14-16, 23-45, 49-51, 58-81, 84-98, 100, 102-112, 115-129, and 131. Applicants respectfully reserve the right to request rejoinder of the remaining withdrawn dependent claims when the application is allowed.

Rejections under 35 U.S.C. § 103

- Claims 1, 3-10, 14-16, 23-36, 38-45, 49-51, 84-98, 100, 102-112, 115-129, 131, 133, 136-140, 145 and 146 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,803,500 to Mossberg ("Mossberg") in view of U.S. Patent No. 6,255,652 to Godin *et al.* ("Godin") and U.S. Patent No. 5,903,874 to Leonard *et al.* ("Leonard").
- Claims 2, 37, 134 and 141-144 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mossberg in view of Godin and Leonard and further in view of U.S. Patent No. 6,012,045 to Barzilai ("Barzilai").
- Claims 135 and 147-148 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mossberg in view of Godin and Leonard and further in view of the Examiner's Official Notice ("Official Notice").
- Claims 149-153 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mossberg in view of Godin and Leonard and further in view U.S. Patent No. 6,112,181 to Shear ("Shear").

Applicants disagree with the propriety of these rejections. However, solely in an effort to expedite prosecution, Applicants have amended independent claims 1, 36, 71, 102, 133 and 153 to clarify point of novelty and to broaden some aspects of the claimed invention.

During the Interview, the participants primarily discussed the rejection of independent claim 133, and thus, Applicants will begin discussion with regard to the rejection of independent claim 133.

A. The alleged combination of Mossberg, Godin, and Leonard fails to teach all the features of independent claim 133.

Assuming, *arguendo*, that it were legally proper to modify Mossberg based on teachings of Godin, and that it were also legally proper to further modify the combination of Mossberg and Godin based on the teachings of Leonard (neither of which Applicants concede), the combination thereof fails to disclose, teach or suggest, each and every feature recited in independent claim 133.

Independent claim 133 recites, *inter alia*, the features of:

displaying options to enable users to place a bid on one or more discounted gift certificates for auction and being determined a winner, or to purchase the one or more discounted gift certificates at a fixed price via an instant purchase feature without participating in the auction.

[Emphasis added].

As pointed out by Applicants' representative during the Interview, the combination of displaying options and enabling users to place a bid on gift certificates for auction or to purchase gift certificates at a fixed (discounted) price via an instant purchase feature without participating in the auction, is more advantageous for users than enabling just one feature or the other. For example, some users may want to place a bid on a gift certificate through the auction in hopes of obtaining the gift certificate at a lower price (even though there is no guarantee), and some users may want to purchase the gift certificate at a fixed price immediately via the instant purchase feature, rather than participating in an auction and waiting for the results. [See, e.g., Applicants' Specification, pg. 29, lines 5-10]. Thus, the claimed invention simultaneously displays options for enabling both features, as well as, the advantages in their combination.

By contrast, Mossberg, Godin, and Leonard, either taken alone or in combination, fail to disclose or render obvious the combination of these features. For example, Mossberg teaches conducting a silent or live auction. [See Mossberg, Abstract]. Thus, not only does Mossberg fail to teach a computer-implemented method/system for conducting an auction via a web-site, but as conceded by the Examiner, Mossberg fails to teach an immediate buy option. [See Final Action, pg. 4]. Godin, which the Examiner alleges teaches an instant purchase feature, fails to teach allowing users to place a bid in an auction. Instead, Godin teaches a reverse auction process with no bidding. [See Godin, col. 2, lines 52-67; Cf. col. 1, lines 22-24]. As such, Godin teaches away from claimed invention. [See *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) (It is improper to combine references where the references teach away

from their combination.]). Finally, Leonard is silent as to bidding in an auction or an instant purchase feature, much less the combination thereof.

For *at least* the foregoing reasons, the rejection of independent claim 133 under 35 U.S.C. § 103(a) over Mossberg in view of Godin and Leonard is improper and should be withdrawn. Dependent claims 134-152 are allowable because they depend from the allowable independent claim 133, as well as for the additional features they recite.

Moreover, neither Barzilai, Shear, nor the Official Notice taken, overcome the deficiencies of Mossberg, Godin, and Leonard. For example, Barzilai was relied upon by the Examiner for alleging teaching setting a minimum bid price for an item for an auction. [See Final Action, pg. 11]. Shear was relied upon by the Examiner for allegedly teaching a restaurant search module. [See Final Action, pg. 16]. Further, the Official Notice taken by the Examiner alleges that businesses have non-peak demand periods, in which coupons may only be accepted, and that websites require users to input demographic information during registration. [See Final Action, pgs. 14 and 15]. However, neither Barzilai, Shear, nor the Official Notice taken, teach displaying options to enable users to place a bid on gift certificates for auction or to purchase gift certificates at a fixed price via an instant purchase feature without participating in the auction.

B. The alleged combination of Mossberg, Godin, and Leonard and further in view of Shear fails to teach all the features of independent claim 153.

Assuming, *arguendo*, that it were legally proper to further modify the combination of Mossberg, Godin, and Leonard, based on the teachings of Shear (which Applicants do not concede), the combination of Mossberg, Godin, Leonard, and Shear fails to disclose, teach or suggest, each and every feature recited in independent claim 153.

Independent claim 153 recites, *inter alia*, the features of:

an auction module, the auction module enabling the user to place a bid on the discounted gift certificates being offered for auction, wherein the discounted gift certificates offered for auction are sold to a winner of the auction; **and**

an instant purchase feature that enables the user to immediately buy one or more of the discounted gift certificates at a fixed price specified by a corresponding one of the restaurants without participating in the auction.

[Emphasis added].

As discussed above, the combination of Mossberg, Godin, and Leonard fails to disclose, teach, or suggest displaying options to enable users to place a bid on gift certificates offered for auction or to purchase gift certificates at a fixed price without participating in the auction. For similar reasons, the combination of Mossberg, Godin, and Leonard also fails to disclose, teach, or suggest an auction module for enabling users to place a bid on gift certificates for auction and an instant purchase feature for enabling users to purchase gift certificates at a fixed price without participating in the auction.

Shear does overcome the deficiencies of Mossberg, Godin, and Leonard. Shear was relied upon by the Examiner for allegedly teaching a restaurant search module. [See Final Action, pg. 16]. However, Shear fails to teach an auction module for enabling users to bid on gift certificates for auction and an instant purchase feature for enabling user to purchase gift certificates at a fixed price without participating in the auction.

For *at least* the foregoing reasons, the rejection of independent 153 under 35 U.S.C. § 103(a) over Mossberg, Godin, Leonard and further in view of Shear is improper and should be withdrawn.

C. The alleged combination of Mossberg, Godin, and Leonard fails to teach all the features of independent claims 1 and 36.

Independent claim 1 recites, *inter alia*, the features of:

displaying options to enable users to place a bid on an item for auction or to purchase the item at a fixed price without participating in the auction;

processing requests for fixed price purchases upon receipt of a request from a user for a fixed price purchase; and

processing auction bids, at the conclusion of an auction, to determine an auction winner for auctioned items.

Similarly, independent claim 36 recites:

a user module for displaying options to enable users to place a bid on an item for auction or to purchase the item at a fixed price without participating in the auction; and

a system processor for processing requests for fixed price purchase upon receipt of a request from a user for a fixed price purchase, and processing auction bids, at the conclusion of an auction, to determine an auction winner for auctioned items.

[Emphasis added].

As discussed above, the combination of Mossberg, Godin, and Leonard fails to disclose, teach, or suggest displaying options to enable users to place a bid on gift certificates offered for auction or to purchase gift certificates at a fixed price without participating in the auction. For similar reasons, the combination of Mossberg, Godin, and Leonard also fails to teach displaying options to enable users to place a bid on an item for auction or to purchase the item at a fixed price without participating in the auction.

Further, claims 1 and 36 recite processing requests for fixed price purchases upon receipt of a request from a user for a fixed price purchase; and processing auction bids, at the conclusion of an auction, to determine an auction winner for auctioned items, which the combination of Mossberg, Godin, and Leonard fails to teach the combination thereof.

For *at least* the foregoing reasons, the rejection of independent claims 1 and 36 under 35 U.S.C. § 103(a) in view of Mossberg, Godin, and Leonard is improper and should be withdrawn. Dependent claims 2-10, 14-16, 23-35, 37-47, 49-51, 58-70, are allowable because they depend from the allowable independent claims 1 and 36, as well as for the additional features they recite.

Moreover, as discussed above, neither Barzilai, Shear, nor the Official Notice taken, overcome the deficiencies of Mossberg, Godin, and Leonard.

D. The alleged combination of Mossberg, Godin, and Leonard fails to teach all the features of independent claims 71 and 102.

Independent claim 71 recites, *inter alia*, the features of:

displaying options to enable users to place a bid on a certificate for auction or to purchase the certificate at a fixed price without participating in the auction;

receiving at the web site requests from users to purchase the certificate at a fixed price and processing said requests; and

receiving at the web site auction bids from bidders, specifying an amount a bidder is willing to pay for a certificate.

Similarly, independent claim 102 recites:

a user module for displaying options to enable users to place a bid on a certificate for auction or to purchase the certificate at a fixed price without participating in the auction;

an instant purchase feature for receiving at the web site requests from users to purchase the certificate at a fixed price; and

a bidding module for receiving at the web site auction bids from bidders, specifying an amount a bidder is willing to pay for a certificate.

[Emphasis added].

As discussed above, the combination of Mossberg, Godin, and Leonard fails to disclose, teach, or suggest displaying options to enable users to place a bid on gift certificates offered for auction or to purchase gift certificates at a fixed price without participating in the auction. For similar reasons, the combination of Mossberg, Godin, and Leonard also fails to teach displaying options to enable users to place a bid on a certificate for auction or to purchase the certificate at a fixed price without participating in the auction.

Further, claims 71 and 102 recite the features of receiving at the web site requests from users to purchase the certificate at a fixed price purchase (and processing said requests); and receiving at the web site auction bids from bidders, specifying an amount a bidder is willing to pay for a certificate, which the combination of Mossberg, Godin, and Leonard fails to teach the combination thereof.

For *at least* the foregoing reasons, the rejection of independent claims 71 and 102 under 35 U.S.C. § 103(a) in view of Mossberg, Godin, and Leonard is improper and should be withdrawn. Dependent claims 72-81, 84-98, 100, 103-112, 115-129, and 131, are allowable because they depend from the allowable independent claims 71 and 102, as well as for the additional features they recite.

Moreover, as discussed above, neither Barzilai, Shear, nor the Official Notice taken, overcome the deficiencies of Mossberg, Godin, and Leonard.

CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

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